

No. 1036

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

CHRYSLER CORPORATION, DESOTO MOTOR COR-  
PORATION, PLYMOUTH MOTOR CORPORATION,  
DODGE BROTHERS CORPORATION, AND CHRYS-  
LER SALES CORPORATION,

*Appellants,*

vs.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA

REPLY BRIEF FOR APPELLANTS.

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**Errors and Admissions in Government's Statement and Brief.**

Appellants call to the Court's attention the following erroneous statements or implications in the Government's brief: Commercial Credit Company and its subsidiaries are not Appellants here. (Gov't Br. 3). The *only* evidence which the Government offered in the court below was cer-

tain documents in the civil proceeding against General Motors (Gov't Br. 5; R. 166). Appellants did not "fail" to offer evidence in any sense indicating a default of any duty upon them to come forward with evidence (Gov't Br. 6); but Appellants merely introduced no rebuttal evidence, "the Government's evidence . . . not having created any issue of fact" (App. Br. 8). Under the heading "General Nature and Scope of the Consent Decree" (Gov't Br. 9), the Government discusses Paragraph 12a in such a way as to make it appear that the separate Paragraph 12 was to operate "in like manner" (Gov't Br. 11), and fails (Br. 9-11) to take account of the fact that Paragraph 12a is distinct from, and is not a subsection or part of, Paragraph 12 (see App. Br. 4 and Note 1 pp. 3-4; R. 40-41) and by its terms is to operate in a different manner. The Government also implies that the Appellants are "seeking escape from obligations" to which they have assented (Gov't Br. 19-20), whereas in fact it is the Government itself which seeks escape from the express condition of Paragraph 12 to which it assented.

The Government concedes, in specific and unqualified language, the inequitable nature of its case. It admits that the decree "manifests on its face" that Chrysler gave its assent only upon the specific condition (Gov't Br. 24) that "if, by that date [January 1, 1941] a decree not subject to further review had not been entered ending General Motors' affiliation with G. M. A. C., the prohibition was to be no longer operative" (Gov't Br. 24-25; Finding No. 6, R. 155), and that "this basis for framing the decree was reasonable from the standpoint of all concerned" (Gov't Br. 24). Despite these clear admissions, the Government still insists that, upon its mere request, the trial court could set at naught the "express condition" of Paragraph 12.

## The Government's Brief Does Not Disclose Any Basis for Modifying the Decree.

The discursive argument of the Government fails to disclose any warrant, under existing law or in common justice, for the modification of the decree. As a matter of fact, the Government seeks to have this Court accept a new principle for the modification of decrees, a principle that the Government's unsupported and controverted assertion of "objectives" or "state of mind" shall override a clear and unequivocal provision of the decree to the contrary. In the remainder of its argument, in the guise of supporting the findings of the court below, the Government struggles to explain away the plain and specific terms of Paragraph 12; it brings forward pretended "changes of condition" as sustaining the modification of the decree; and it asserts a claim of "diligence" which is both irrelevant under the terms of the decree and contrary to fact.

### 1.

THE GOVERNMENT SEEKS TO HAVE THIS COURT ACCEPT A NOVEL AND UNTENABLE GROUND FOR THE MODIFICATION OF DECREES.—In its first argument, entitled "Principles Governing Modification of A Consent Decree" (Gov't Br. 17-20), the Government, taking a general expression out of its context of law and fact in a Pennsylvania decision, manufactures a rule that the court which enters a decree may modify it arbitrarily upon a mere statement that "the ends of justice would be served" by such modification (Gov't Br. 17, 22). Of course, all judicial proceedings are designed to promote "the ends of justice", but judgments and decrees, original as well as modifying, are entered only upon proper pleadings and proof, and according to the rules of law. Otherwise judicial fiat would take the place of due process.

Next, the Government argues much in derogation of *United States v. Swift & Co.*, 286 U. S. 106, on the ground

that there it was not the Government but a private party which sought a modification of a decree (Gov't Br. 17-19). But the Government does not mention *United States v. International Harvester Co.*, 274 U.S. 693, 710, in which the shoe was on the other foot and in which this Court held that the Government could not obtain an amendment of a consent decree unless it alleged and proved a situation not "in harmony with law"; nor does the Government, in its brief, deign to discuss other numerous authorities of this Court set forth in Appellants' brief (pp. 21-22).

Despite its disavowal "that different principles apply where . . . the moving party is the Government" (Gov't Br. 19), the Government asserts on the very next page that the trial court in this case should be permitted to "go much farther" than "when only private interests are involved" (Gov't Br. 20). Even such a rule would not give the Government a right to have an equity consent decree modified merely upon its assertion of whatever it chooses to call its "objectives"—not the objectives stated in the decree but merely those which the Government says it "had in mind" (Gov't Br. 19). The Government thus asserts authority to modify solemn decrees merely upon its own ipse dixit.

Heretofore the basic and unbroken rule of law has always been that the purpose or objective of unambiguous decrees is to be construed upon their face—from and within their four corners—rather than upon the ex post facto, elusive, precarious, and unreliable assertions of a contrary understanding, intent, or objective of a party or even of the court of original jurisdiction (App. Br. 14). The application of this basic principle is indispensable here where the decree provision is clear and specific, where only one party asserts the alleged "objective", where the court merely entered as its decree what had been agreed upon by the parties after long negotiation, and where the alleged

"objective" is destructive of the whole of the provision sought to be modified. Otherwise, the very purpose of written instruments is undermined.

THE FINDINGS OF THE COURT BELOW ARE MERE SHAM.—Aside from its novel "rule" for modifying consent decrees upon mere Government request, discussed above, the Government seeks to sustain its action, and that of the court below, by the timeworn device of pulling one's self up by the bootstraps. It first asserts that "there can be no doubt as to the propriety of the court's action, assuming the validity of its findings" (Gov't Br. 21). This single sentence is unsupported by reason or authority except for the Government's statement that Appellants "do not seem to question the propriety of the change in the decree made by the district court if, in fact, its findings are correct" (Gov't Br. 21). But this latter statement is completely erroneous. Appellants' specifications of error set out the irrelevant and insufficient nature of finding after finding (App. Br. 8-11), and the whole of Appellants' main brief is devoted to the same general theme. Moreover, the findings do not rest upon evidence; the Government presented no evidence in support of them.

The Government, after this barren paragraph in its brief, turns immediately to a discursive argument under the misleading heading, "The Facts before the District Court Amply Support Its Findings as to Purpose" (Gov't Br. 22-33). But these "facts" turn out to be nothing more than the original decree itself. It is true that the court below made a "finding" as to purpose (No. 3, R. 155); but this "finding" is merely an interpretation of the so-called "basis" for the original decree. It does not answer the point here involved, which the express condition of Paragraph 12 of the decree covers without ambiguity. The Government offered no evidence to support this "finding". It

asserts that the court could properly consider "the circumstances under which the [original] decree was entered, its scope and structure as a whole, and the evils which the decree was designed to prevent" (Gov't Br. 23). But all of these, and the terms of the proposed consent decree as well, were before the parties and the court when they consented to, and entered, the decree. No other provisions of the consent decree affect the express condition of Paragraph 12 because the latter provides that it shall be operative "notwithstanding . . . any other provisions of this decree" (R. 40). Accordingly, whatever the original complaint of the Government or the intent of the parties, all have been dealt with and, under familiar principles of law respecting written instruments, merged into the specific terms of the decree, including Paragraph 12.

This case is therefore manifestly not one for interpretation because (a) the decree is clear, specific, and unambiguous, and (b) if the question were merely one of interpretation there would be no need for the amendatory decree here in issue. The Government concedes as much, saying with respect to Paragraph 12 that "the issue here is not what this provision means", but it insists that the trial court may "look beyond the face of this provision" to find an "objective" upon which a restraint of the decree may be extended despite the express terms of the decree itself (Gov't Br. 22). Admitting that it had freely and fairly agreed to the express condition of Paragraph 12 (Gov't Br. 24-25), the Government makes the bare assertion that its agreement is "not inconsistent" with its view that the express condition of Paragraph 12 shall be inoperative (Gov't Br. 25-26). It predicates this conclusion on two hypotheses: The first is, "if the parties . . . acted upon the belief that General Motors would . . . assent to a decree". The second is, "the parties *may have* also acted upon the

belief" that the Government would either meet its "timetable" or secure a modification of Paragraph 12 by consent or court order. The Government concludes that, in either case, "there is no inconsistency" (Gov't Br. 25-26). The trouble with this curious argument, however, is that it is not only wholly speculative but it amounts merely to an assertion that parties are not inconsistent if they agree to one thing but one of them mentally notes, or "may have" noted, that he will do something else—an idea subversive of the very basis of the law as relates to written instruments. The result of any such theory is to make Paragraph 12 and every other provision of the decree meaningless.

Next, the Government resorts to rules regarding the interpretation of private contracts (Gov't Br. 27-28), which, as pointed out in Appellants' main brief (pp. 14-15), do not help the Government.

Finally, in concluding its interpretative arguments, the Government belittles its own decree on the ground that, if Paragraph 12 is the "timetable" that the Government concedes it to be, then the Government has engaged in a "frivolous" and "purely gambling proposition" (Gov't Br. 28, 29, 30). The Government asserts that this would be reasonable only if the point were regarded "as of merely minor or incidental importance" (Gov't Br. 29). But the parties—though the matter was concededly a principal item in the original complaint of the Government and in the framing of the consent decree (App. Br. 16-17; Gov't Br. 29)—deliberately determined upon the timetable of Paragraph 12 as a compromise to solve the difficult question of placing Chrysler under restraint while leaving its principal competitor free (App. Br. 3-6). It was, moreover, a solution which the Government elsewhere in its brief recognizes as both reasonable and practicable (Gov't Br. 24-25).

In concluding the point the Government makes four arguments:

(a) The Government argues that to allow Chrysler the benefit of Paragraph 12 would "weaken the effectiveness of the decree" (Gov't Br. 30-31). But the answer is that the Government deliberately agreed to Paragraph 12 and must not then have regarded it as "weakening the effectiveness of the decree".

(b) The Government argues that, in any later proceedings respecting affiliation, the Government would lose the effect of linking it "with the illegal conspiracy charged in the Government's [original] bill of complaint in this case" (Gov't Br. 31). But the answer is that the Government agreed that Chrysler should no longer be bound if the Government did not meet the "timetable" and thereby agreed to relinquish for the future the advantage it might have in "linking" an affiliation proceeding with other alleged acts of conspiracy settled by the decree.

(c) The Government argues that Chrysler has come forward with no showing "that affiliation gives General Motors a competitive advantage in the sale of its cars" (Gov't Br. 32). But the answer is that the burden is upon the Government to prove that it would be illegal for Chrysler to have any interest in a finance company, and not upon Chrysler to prove that it ought to have such an interest.

(d) The Government argues that Chrysler has had enough "substantial advantages . . . from its acceptance of the consent decree" without insisting upon the terms of Paragraph 12 (Gov't Br. 33). But the Government cannot at will rewrite the decree it consented to, merely because it now thinks that the decree is not unfavorable enough to Chrysler.

THE GOVERNMENT RELIES UPON PRETENDED "CHANGES OF CONDITION" AS SUPPORTING THE DECREE OF MODIFICATION.—

Although the court below actually made no finding on the point, the Government asserts that modifying the decree "merely adapts the provisions of the decree to circumstances which have arisen since its entry" (Gov't Br. 21-22). Later in its brief, under the heading "Material Changes in Circumstances and Conditions Occurring since Entry of the Decree Justify the Decree of Modification" (Gov't Br. 33-36), the Government grasps at two events relating to the automobile industry. First, it points out that the criminal proceeding against General Motors has resulted favorably to the Government (Gov't Br. 33-34). This was an event that was expressly foreseen by the Chrysler consent decree itself but which did not affect the operation of the express condition of Paragraph 12. It was, therefore, not a new and unforeseen condition within the rule of the *Swift* and *Harvester* cases (App. Br. 21-22).

Secondly, the Government points to the war and its attendant curtailment of automobile production as a further "change in conditions" (Gov't Br. 34-36). Here the Government's theory seems to be that Chrysler cannot be at a competitive disadvantage because the automobile business has been drastically restricted. But automobiles and dealers still exist in the commercial world. Dealers are hampered and in need of financing aid. General Motors has its wholly owned finance company to supply such aid; but Chrysler, under the modified decree here in issue, can have no corresponding means for furnishing it, despite the need to keep intact its dealer organization. The Government suggests that Chrysler aid its dealers out of pocket or "repurchase cars now in the hands of its dealers" (Gov't Br. 35-36). Then it adds that, if all this is not

enough, Chrysler should petition the district court for its own modification of the decree (Gov't Br. 36). In short, the Government seeks to require Chrysler to extend its operations to the retail field, to qualify itself to do business in every state, and to subject itself to local taxing and other regulatory authorities; and, if all this is too much, to assume the burden of getting the decree modified. But Chrysler is entitled to have the plain and unambiguous terms of Paragraph 12 left unchanged. It is no answer for the Government or the court below (R. 156) to suggest, and remand Appellants to, some alternative, more burdensome, and less effective mode of procedure or operation.

## 4.

THE GOVERNMENT'S CLAIM OF DILIGENCE IN PROCEEDING AGAINST GENERAL MOTORS IS BOTH IRRELEVANT AND CONTRARY TO FACT.—Despite the undisputed facts pointed out by Appellants (App. Br. 15-16), the Government ignores its two-year delay in instituting civil proceedings against General Motors. It attempts to blame the trial courts for granting continuances "over the Government's opposition" in those proceedings (Gov't Br. 37), but fails to note that it had itself previously five times voluntarily extended General Motors' time to answer (R. 91, 95, 97, 104, 126) and defaulted on another motion to the same effect (R. 136A). It pleads the "expense and burden" of conducting the civil proceedings against General Motors simultaneously with the criminal proceedings against General Motors (Gov't Br. 37-38).

But neither the Government's convenience nor diligence is relevant. The Government agreed that Chrysler should cease to be bound if the Government did not get its decree against General Motors by the required date. It did not agree to proceed against General Motors or to do it diligently. It could keep Chrysler bound by getting the decree

against General Motors; or it could let Paragraph 12 take effect and take its time against General Motors, or abandon its proceeding against General Motors. But in its case against General Motors, it cannot, under the express condition of Paragraph 12 of the decree or in equity, go beyond the specified time and still keep Chrysler bound.

The question is not one of diligence but of compliance with the express condition of Paragraph 12. For, with complete control of the prosecution of such proceedings and a wealth of experience in conducting such proceedings, the Government assented to the express condition of Paragraph 12 just as Chrysler consented to it. For all that appears here, therefore, the Government has shown no ground for relief from its undertaking.

### Conclusion.

It is submitted that the decree of modification was entered without requisite pleading or proof, upon the mere request and assertions of the Government, and contrary to the express terms of the original decree. It was, therefore, imposed upon Appellants without due process of law and should be reversed.

Respectfully submitted,

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April, 1942.